

REMARKS

Claims 1, 3 – 5, 8, and 9 are amended and presented for reconsideration. Claims 10 – 19 are newly added and presented herewith for initial examination on the merits. By the above amendments, claims 2, 6, and 7 are cancelled without prejudice or disclaimer, Applicants reserving the right to pursue the full scope of these claims in one or more continuing applications.

In the outstanding office action, the Examiner:

- rejected claims 1 – 9 under 35 U.S.C. 112, second paragraph, for indefiniteness,
- rejected claims 1, 3 – 5, 8 and 9 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,541,087 to Pophusen (hereinafter referred to as “Pophusen”);
- rejected claim 2 under 35 U.S.C. 102(a) as being anticipated by WO 02/26494 A2 to Blok et al. (hereinafter referred to as “Blok”);
- rejected claim 6 under 35 U.S.C. 103(a) as being unpatentable over Pophusen in view of U.S. Patent No. 6,177,159 to Tajiri et al. (hereinafter referred to as “Tajiri”); and
- rejected claim 7 under 35 U.S.C. 103(a) as being unpatentable over Pophusen in view of U.S. Patent No. 5,595,623 to Lulham et al. (hereinafter referred to as “Lulham”).

By this response and amendment, Applicants:

- amend claims 1, 3 – 5, 8, and 9 in a manner which obviates the Examiner’s rejections under 35 U.S.C. 112, second paragraph;
- traverse the Examiner’s rejections of claims 1, 3 – 5, 8, and 9 under 35 U.S.C. 102(e) over Pophusen;

- cancel claims 2, 6, and 7 without prejudice or disclaimer, thereby obviating the Examiner's rejection of these claims; and
- present new claims 10 – 19 for first consideration by the Examiner.
 - New claim 10 recites a feature removed from the preceding claims to address the Examiner's rejection under 35 U.S.C. 112, second paragraph.
 - New claim 11 recites a sausage casing comprising the food package casing or film of claim 1.
 - New claims 12 – 19 recite the features of claims 1, 3 – 5, and 8 – 11, but with structure (b) removed from the independent claim.

Support for the amendments to claim 1 may be found on pages 3 and 4 of the specification as originally filed. Support for new claims 10 and 18 may be found in original claim 1. Support for new claims 11 and 19 may be found in the first paragraph the present application as originally filed. Support for claims 12 – 17 may be found in original claims 1, 3 – 5, 8 and 9. It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132.

Rejection Under 35 U.S.C. 112

The Examiner rejected 1 – 9 under 35 U.S.C. 112, second paragraph, as being indefinite. The Examiner asked that the words “preferably” and “alternatively” be removed from all claims, and that all groups of compounds be recited in proper Markush format.

Response

Applicants have cancelled claims 2, 6, and 7, obviating the rejections thereto.

Further, Applicants have amended claims 1, 3 – 5, 8, and 9 to remove the terms “preferably” and “alternatively.” The term “polyethylene,” removed from claim 1 with the term “preferably,” is now presented in new claim 10, in a mannerd which presents no indefiniteness.

Applicants submit that the above amendments thus collectively obviate the Examiner’s rejections under 35 U.S.C. 112, and request that these rejections be withdrawn.

Rejection Under 35 U.S.C. 102(b)

The Examiner rejected claims 1, 3 – 5, 8 and 9 under 35 U.S.C. 102(e) as being anticipated by Pophusen, and rejected claim 2 under 35 U.S.C. 102(a) as being anticipated by Blok.

Response

For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. *Impax Laboratories v. Aventis Pharmaceuticals*, 468 F.3d 1366, 1381 (Fed. Cir. 2006).

Applicants traverse the Examiner’s rejection of claims 1, 3 – 5, 8, and 9 under 35 U.S.C. 102(e), because the cited art does not disclose, teach, or suggest all of the features of independent claim 1, and thus of claims 3 – 5, 8, and 9 dependent therefrom.

Claim 1 recites three structures for a tubular food package casing or film.

Structure (a) has six layers, from outside to inside:

- a layer comprising polyamide,
- a layer comprising EVOH,
- a layer comprising an adhesion agent,
- a layer comprising polyolefin,
- a layer comprising an adhesion agent, and
- a layer comprising polyamide.

Structure (b) has seven layers, from outside to inside:

- as amended, a layer *consisting of a* polyamide,
- a layer comprising EVOH,
- a layer comprising polyamide,
- a layer comprising an adhesion agent,
- a layer comprising polyolefin,
- a layer comprising an adhesion agent, and
- as amended, a layer *consisting of a* polyamide.

Structure (c) has seven layers, from outside to inside:

- a layer comprising polyamide,
- a layer comprising an adhesion agent,
- a layer comprising polyamide,
- a layer comprising EVOH,
- a layer comprising polyamide,

- a layer comprising an adhesion agent, and
- as amended, a layer comprising *polyamide*.

(emphases added)

The Examiner cites examples 1 and 2 of Pophusen as reciting a tubular film which anticipates these claims.

Example 1 of Pophusen is directed to a tubular film of seven layers, from outside to inside:

- a combination of a polyamide and a polyamide 6-based masterbatch,
- an ethylene/vinyl alcohol copolymer,
- a copolyamide,
- a polyolefinic coupling agent,
- a combination of a polyolefin having water vapor barrier properties and a polyolefin-based masterbatch,
- a polyolefinic coupling agent, and
- a polyamide.

Example 2 of Pophusen is also directed to a tubular film of seven layers, from outside to inside:

- a combination of a polyamide and a partially aromatic copolyamide,
- a combination of ethylene/vinyl alcohol copolymer and a copolyamide,
- a combination of a polyamide and a partially aromatic copolyamide,
- a polyolefinic coupling agent,

- a polyolefin having water vapor barrier properties,
- a polyolefinic coupling agent, and
- a combination of a polyamide and an antiblocking masterbatch.

Structure A

Applicants note that, among other differences, examples 1 and 2 in Pophusen are directed to seven-layer structures. As such, Pophusen does not anticipate structure (a) of claim 1, which has only six layers.

Structure B

Applicants note that structure (b) has been amended to recite that the first and seventh layers, from outside to inside, each *consist of a* polyamide. This claim language has been deliberately chosen to exclude combinations of polyamides with other materials such as masterbatches.

Structure (b) as amended differs from Example 1 of Pophusen, which has as its first layer, from outside to inside, *a combination of a polyamide and five percent of a polyamide 6-based masterbatch*.

Structure (b) as amended also differs from Example 2 of Pophusen, which has as its seventh layer, from outside to inside, *a combination of a polyamide and five percent of an antiblocking masterbatch*.

At least for the above reasons, Pophusen does not anticipate structure (b) of claim 1.

Structure C

Applicants note that structure (c) differs from Examples 1 and 2 of Pophusen in a number of ways.

Inter alia, the second layer of structure (c), from outside to inside, comprises an adhesion layer; the fourth layer of structure (c), from outside to inside, comprises EVOH; and, the fifth layer of structure (c), from outside to inside, comprises polyamide.

Structure (c) differs from Example 1 of Pophusen, which has as its second layer, from outside to inside, a ethylene/vinyl alcohol copolymer, and which has as its fourth layer, from outside to inside, a polyolefinic coupling agent, and which has as its fifth layer, from outside to inside, a combination of a polyolefin having water vapor barrier properties and a polyolefin-based masterbatch.

Structure (c) also differs from Example 2 of Pophusen, which has as its second layer, from outside to inside, a combination of an ethylene/vinyl alcohol copolymer and a copolyamide, and which has as its fourth layer, from outside to inside, a polyolefinic coupling agent, and which has as its fifth layer, from outside to inside, a polyolefin having water vapor barrier properties.

At least for the above reasons, Pophusen does not anticipate structure (c) of claim 1, and

Accordingly, As Pophusen does not anticipate structures (a), (b), or (c) of claim 1, Applicants submit that claim 1, and thus claims 3 – 5, 8, and 9 dependent therefrom, are allowable over Pophusen. Reconsideration and withdrawal of the rejection of claims 1, 3 – 5, 8, and 9 are requested.

Applicants note that the cancellation of claim 2, without prejudice or disclaimer, obviates the Examiner's rejection under 35 U.S.C. 102(a) of this claim.

Rejection Under 35 U.S.C. 103(a)

The Examiner rejected claim 6 under 35 U.S.C. 103(a) as being unpatentable over Pophusen in view of Tajiri, and rejected claim 7 under 35 U.S.C. 103(a) as being unpatentable over Pophusen in view of Lulham.

Response

Applicants note that the cancellation of claims 6 and 7, without prejudice or disclaimer, obviates the Examiner's rejections under 35 U.S.C. 103(a).

New Claims

As argued above, Claim 1 is believed to be allowable over the cited art of record.

Accordingly, new claims 10 and 11 are believed to be allowable at least for their dependence from claim 1.

New independent claim 12 is identical to amended claim 1, but recites only structures (a) and (c). As such, new claim 12 is believed to be allowable over the cited art of record at least for the reasons argued above with respect to claim 1.

New dependent claims 13 – 19 are identical to amended claims 3 – 5, and 8 – 11. Claims 13 – 19 are believed to be allowable at least for their dependence from allowable claim 12.

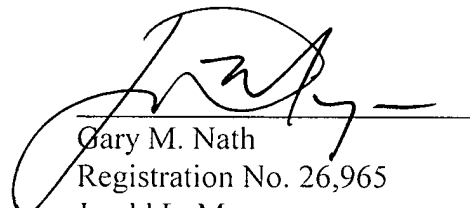
CONCLUSION

In light of the foregoing, Applicant submits that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner call the undersigned.

Respectfully submitted,
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